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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th March 2008

No. 3628—li/1(J)-11/2003-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th December 2007 in I. D. Case No. 12 of 2003 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the management of M/s Narendra Company, Ballarpur Industries Ltd. (Unit Sewa), Gaganpur, At/P.O. Jeypore, Dist. Koraput and the representatives of BILT Paper Mill Thikadar Mazdoor Sangha, Gaganpur, Jeypore, Dist. Koraput was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 12 OF 2003

Dated the 15th December 2007

Present :

Shri G. K. Mishra, o.s.j.s. (Jr. Branch),
Presiding Officer, Labour Court,
Jeypore, Dist. Koraput.

Between :

Shri Narendra Kumar Mohanty,
M/s Narendra Company
Ballarpur Industries Ltd. (Unit Sewa),
Gaganpur, At/P.O. Jeypore, Dist. Koraput.

.. First Party—Management
No. I

The C.G. M., BILT Unit Sewa, Gaganpur,
At/P.O. Jeypore, Dist. Koraput.

.. First Party—Management
No. II

Versus

The General Secretary, Ballarpur Industries Ltd. (Unit Sewa), Paper Mill Thikadar Mazdoor Sangha, At Jayanagar, P.O. Jeypore, Dist. Koraput. Under Sections — 10 and 12 of the Industrial Disputes Act, 1947	.. Second Party—Workman
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Appearances :

For the Management	..	Shri K.N. Samantray, Advocate, Jeypore
No. I & II		
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For the Workman	..	Shri B.V. Ramana A/R of the workman
Date of Argument	..	7-12-2007
Date of Award	..	15-12-2007

AWARD

The Government of Orissa, in the Labour & Employment Department, in exercise of powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following disputes:—

SCHEDULE

“ Whether the termination of services of Shri A. Bhima Rao, workman by M/s Narendra Company a contractor BILT (Unit SEWA), Gaganpur, Jeypore, Dist. Koraput with effect from the 21st May 2002 is legal and/or justified ? If not, what relief Shri Rao is entitled to ?”

2. This case appears to have been originated out of the reference submitted by the Government to this Court for determination of an issue with regard to the validity and justifiability of the termination effected on the workman since from the 21st May 2002 coupled with the relief to be granted in consequence upon such determination.

3. The brief matrix of the facts presented by the workman may be described here under that the workman was engaged as daily wage basis from 1996 till the 20th May 2002 when after his service was terminated by the management. It is alleged that the workman on the 21st May 2002 was disallowed to entry into the premises to perform his duty without giving any prior notice as mandatory u/s 25-F of the I.D. Act, 1947. On that score he challenged the order of termination to be illegal and unjustified and claims for reinstatement and full back wages.

4. The management on the contrary repelled the assertions put forth by the workman and contended *in te ralia* that the workman was not terminated but he voluntarily abandoned his service for which no compliance of u/s 25-F of the I.D. Act was required to be adopted. Added to this, the management submitted that the workman having voluntarily relinquished his job and working under another contractor it can not be said that the disengagement amounts to retrenchment and for this the workman is not entitled to reinstatement and full back wages.

5. There is no dispute regarding the engagement of the workman under the contractor from 1996 to the 28th May 2002 on daily wage basis. The management has not alleged anything that the workman has not consumed 240 working days in a calendar year prior to the date of termination, and no such documents are available on the side of the workman to show the continuity of service as claimed by the workman. As per the evidence produced on behalf of the management it comes crystal clear that the workman was disallowed on the 21st May 2002 by the Supervisor in charge of the management company to enter into the premises for doing his job. Unless and until any information is received from the management permitting workman joining his duty the Supervisor was the agent of the management who performed duties at the acknowledge of the management. So the work done by the Supervisor may be considered to have been effected at the behest of the management. The management also at the subsequent stage did not take any steps regarding the action taken by the Supervisor. The silence of the management amounts to have directed to the Supervisor to disengage the workman from the duty. The plea of the management that the workman voluntarily abandoned his service seems to have been negated by evidence presented by the Union No. 1 examined on behalf of the management. Intention of the workman to abandon his service was purely absent. He being disengaged by the Supervisor it can be said that the intention of the workman to do work has been nullified in this situation, the cause of disengagement of the workman must be substantiated by reasonable cause and fair manner. The act should not be arbitrary and capricious. Every workman has got like to livelihood which is a part and parcel to law as enshrined under Article 21 of the Indian Constitution. Any deprivation of right to livelihood will lead to starvation of the workman and family members for which right to securing his job is available under the Constitution as well as other statutes. Unless until a reasonable cause is established the right to livelihood of the workman shall not be deprived of. The management having not complied with the true provisions of the I.D. Act as enumerated u/s 25-F of the I.D. Act, the order of termination is considered to be illegal and unjustified. The management has committed gross illegality in terminating the services of the workman without any just and fair cause.

6. The result of illegal termination paves way for reinstatement and full back wages. But there is no straitjacket formula to comply such norm. It depends upon the facts and circumstances of the each case. Reinstatement and full back wages can not be permitted to be granted if the workman fails to inform the Court at the very threshold regarding his unemployment during the period of retrenchment. The gainful employment under another company has been accepted by the management. He being employed till today, there is no question of granting reinstatement with full back wages. The justice would be best serve if a lump sum amount of compensation is awarded against the management who had committed violation of the provisions of the law by resisting to illegal termination of the service of the workman. Therefore a sum of Rs. 25,000 is awarded towards compensation to the workman for the loss of his service.

The reference is answered accordingly.

ORDER

The Award is passed in favour of the workman on contest. The management is directed to pay the compensation amount of Rs. 50,000 to the workman within six months, otherwise he be at liberty to take shelter of the appropriate authority for realisation of the aforesaid amount.

Dictated and corrected by me.

G. K. MISHRA
15-12-2007
Presiding Officer
Labour Court, Jeypore, Koraput

G. K. MISHRA
15-12-2007
Presiding Officer
Labour Court , Jeypore, Koraput

By order of the Governor
P. MALLICK
Under-Secretary to Government